

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 784 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

IMTIYAZ ABDUL KARIM @ INTEBAPU

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR. H.L. JANI, AGP, for the respondents

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 25/09/98

ORAL JUDGEMENT

By way of this Special Criminal Application the petitioner seeks a direction to quash and set aside the order of externment dated 17.6.1998 passed by the Sub-Divisional Magistrate, Junagadh under the provisions of Bombay Police Act. The appeal against the said order has been rejected by the order of the State Government dated 6.8.1998.

It is contended by the learned counsel that the order of externment is vitiated for the reasons that the

learned Sub-Divisional Magistrate in his order has said that the petitioner is involved with respect to the offence under Chapters XVI and XVII but in fact there is no offence pertaining to Chapter XVII that the impugned order suffers from non-application of mind. The learned counsel has placed reliance on a decision of the Division Bench of this court in the case of SULEMAN HUSA VS. STATE reported in 1989(1) GLR 101. In the said case the authority has wrongly stated that the case was registered as C.R. No. 58 of 1986 and the same is pending trial. But in fact the petitioner in that case was tried by the court and acquitted. Therefore the said case is of no assistance to the petitioner. The order of externment cannot be quashed just on ipse dixit on showing that certain facts mentioned have not been considered. Reading of the entire order clearly shows that the authority has proceeded on consideration that the offence pertained to Chapter XVI. I find no merit in the first contention raised by the petitioner.

The second contention that there is delay in passing the order of externment inasmuch as the notice was issued on 27.1.1998 and the order of externment was passed on 17.6.1998. Thus, there is a delay of five months. I have read the impugned order. Considering the facts of the case, the delay of five months cannot be said to be a delay to vitiate the order of externment. The second contention is also rejected.

The third contention that there is no live link between the last offence alleged to have been committed on 26.6.1997 and the order of externment. It is to be noticed that the order of externment is of preventive nature. The authority is required to consider the totality of circumstances which calls for externment of a person for the peace of the other citizens. A notice for externment cannot be expected just on isolated incident. The proceedings are initiated only when the authority considering the totality of the facts that the activity of the person is such which is causing or likely to cause harm to other person or property of the other citizens. A perusal of the impugned order clearly shows that on the basis of material on record the authority satisfied that there is a reasonable ground to believe that the petitioner is engaged in commission of offence pertaining to Chapter XVI and XVII and his activities were causing harm to the other person or property. In view of this, I find no merit in the third contention.

Lastly it is contended that the notice does not indicate the area of operation of the petitioner. The learned counsel has placed reliance on the decision of this court in the case of KATHI HARSUR RUKHAD VS. STATE

OF GUJARAT reported in 1986 G.L.H. 158. I have perused notice as well as the impugned order. It clearly mentions the area of operation. The area of operation may limit to a police station and it can also be extended to a district or more districts. In view of this, I do not find any substance in this contention as well.

It is submitted by the learned counsel for the petitioner that the petitioner is prepared to maintain peace and therefore in the peculiar facts and circumstances of the case, the order of externment is substituted by an order asking the petitioner to furnish adequate bond for maintaining peace in the area.

In view of the aforeaid, this Special Criminal Application is partly allowed and the impugned order of externment is substituted as follows:-

The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rupees twenty five thousand) and surety bond of like amount for maintaining peace in the area mentioned in the impugned order for a period of two years. Rule partly made absolute to the aforesaid extent.

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